In the High Court of Judicature for Rajasthan
Jaipur Bench
**
Cr. Msc. Petition No.2113/2007
Madan Lal Mali ***Versus*** State

Date of Order ::: 04/12/07

Hon'ble Mr. Justice Ajay Rastogi

Mr. Anup Dhand, for petitioner
Mr. Arun Sharma, Public Prosecutor

Instant petition has been filed assailing order dt.28/06/03 in Cr.Case No.754/98 on the premise that Addl. Chief Judl. Mag Niwai (Tonk) has not properly considered while granting benefit of probation of Offenders Act, 1958.

Criminal case for offences U/Ss 147, 332, 353, IPC was registered against petitioner along with other accused; after recording of statements of prosecution witnesses and at the stage of recording statement of accused U/s 313, CrPC, petitioner pleaded guilty; vide judgment dt. 28/06/03, while convicting petitioner U/s 147, 332 & 353, IPC, and instead of awarding sentence, learned trial Judge released him on probation U/s 4(1) of the Probation of Offenders Act on his furnishing a personal bond of Rs.1,000/- together with surety of the like amount to the satisfaction

of the trial Court that he will keep peace and be of good behaviour and will not repeat commission of offence for a period of one year.

Only contention advanced by Counsel is that while passing order of probation, amended provision U/s 12 of the Act (reproduced in para 3 of the petition) has not been looked into. In support, Counsel placed reliance upon decisions of this Court in **Shrvanlal Vs. State (2006(3) RcrC 1595**) & in **Khuman Singh Vs. State (1994 CrLR (Raj.) 504**), wherein looking to the fact of the case, benefit of probation U/s 12 of the Act was extended to the accused. S.12 reads ad infra:

> **"12. Removal of disqualification attaching to conviction**. -
>
> Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of section 3 or section 4 shall not suffer disqualification, if any attaching to a conviction of an offence under such law:
>
> Provided that nothing in this section shall apply to a person who, after his release under section, is subsequently sentenced for the original offence."

According to afore-quoted provisions, the person who has been found guilty of an offence and has

been dealt with U/s 3 or 4 of the Act of 1958 shall not suffer disqualification, if any, attaching to a conviction of an offence under law.

It has been brought to the notice that at the time of commission of alleged offences way back in the year 1998, petitioner was a student and after going cumbersome procedure, he has been selected for the post of a Teacher Gr.III vide order dt.27/09/07 (Ann.2) and as a result of impugned order of conviction dt.28/06/03, he has an apprehension of causing any damage depriving him of his right of livelihood. However, vide order of probation impugned dt.28/06/03, certainly petitioner though has been released on probation granting benefit U/s 4 of the Act but provisions of S.12 of the Act has not been looked into and in either case, in view of S.12 of the Act, if the accused has been given benefit U/s 3 or 4 of the Act, conviction impugned will not come in his way, if heis otherwise having unblemished record of character. Taking note of decisions (supra), this Court is of the opinion that the petitioner is also entitled for benefit of S.12 of the Act.

Consequently, misc. petition succeeds and is hereby allowed alongwith stay petition and it is directed that conviction of petitioner (Madan

Lal Mali) will not affect his service career as he has been granted benefit of probation U/s 4 of the Act,1958 vide judgment dt.28/06/03, which stands modified to the above extent. A copy of this order be sent to the trial Court for its record.

(**Ajay Rastogi), J.**

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